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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,191	04/27/2005	Julio Cesar Ruiz Ballesteros	P040411	6955

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SCHIFF HARDIN, LLP  
PATENT DEPARTMENT  
6600 SEARS TOWER  
CHICAGO, IL 60606-6473

EXAMINER
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PAIK, SANG YEOP

ART UNIT	PAPER NUMBER
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3742

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/18/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/511,191

Applicant(s)

RUIZ BALLESTEROS ET AL.

Examiner

Sang Y. Paik

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 7-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 7, 8, 10 and 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Rourke et al (US 6,078,728) in view of Flashinski et al (US 6,154,607) and Kennedy (US 5,695,692).

O'Rourke shows an evaporator having a base body with an integrated plug, a heating surface to provide heating to an active substance provided on a removable and slidable support. The base body has the U shape with a rear and a front portion which further has the aeration grills with the support fit between the rear and front portions and the lateral walls with protrusions. However, O'Rourke does not shows a PTC heating resistance and the support having two housings that are adapted to in size and shape to two different type of containers of the active substances.

Flashinski shows that it is known in the art to provide an evaporator device with a PTC heating element, and Flashinski further shows a slidable support (30B) with a container being a table (24) having an active substance in a tray (20) with a fragrance permeable membrane (28).

Kennedy shows that it is known in the art to provide a volatile carrying support or case with different housings that is capable of accommodating different and varying sizes of the active substances. A first housing can be the circular shape with another housing formed of a

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triangle wedge shape inside the first housing. Furthermore each wedge section can be different housings in combination with each other to allow different containers to be inserted therein. For example, a semi-circular shape container can be inserted into the semi-circular shape housing section with a wedge shape container inserted into the triangular wedge shape housing.

Furthermore, a single wedge shaped container can be inserted therein as shown in Figure 1 or a circular shape can be inserted in the support as shown in Figures 6-8.

In view of Flashinski and Kennedy, it would have been obvious to one ordinary skill in the art to adapt O'Rourke with the PTC heating element, which is known in the art to provide a self-regulating heating, to more uniformly heat the volatile active substances, and further adapt with a carrier having compartments or housings wherein different shapes and sizes of active substances can be provided thereto to allow different volatile substances at different selected regions can be heated.

With respect to claims 10 and 12, the safety mechanism is shown by O'Rourke which shows the teeth established in the front end of lateral walls of the support (see Figures 1 and 3).

3. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Rourke in view of Flashinski and Kennedy as applied to claims 7, 8, 10 and 12-17 above, and further in view of Schroeder (US 4,725,712) and Shibahashi et al (US 5,558,700).

O'Rourke in view of Flashinski and Kennedy shows the device claimed except the thermochrome paint on the body.

Schroeder shows a fluorescent screen provided on the body of the evaporator device to indicate the function of the device. Shibahashi shows that it is well known in the art that a

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thermochrome or thermochromic materials provide fluorescent colors which can be used to indicate the operating temperature.

In view of Schroeder and Shibahashi, it would have been obvious to one of ordinary skill in the art to adapt O'Rourke, as modified by Flashinski and Kennedy, with a pattern made of the thermochrome fluorescent paint to visually indicate the functions of the device such as the operated temperature of the device with the varying fluorescent colors.

4. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Rourke in view of Flashinski and Kennedy as applied to claims 7, 8, 10 and 12-17 above, and further in view of Sprick (US 5,794,803) or Fuchs (US 5,078,288).

O'Rourke in view of Flashinski and Kennedy shows the device claimed except the side surface of the casing or body being deformed to release the locking teeth.

Sprick and Fuchs show a well known locking safety mechanism with the locking teeth engage with the respective complementary locking teeth wherein the engaged teeth are released as the side of a casing or body is press deformed.

In view of Sprick or Fuchs, it would have been obvious to one of ordinary skill in the art to adapt O'Rourke, as modified by Flashinski and Kennedy, with the safety mechanism having the corresponding press release area to ensure safety from inadvertent release of the active substance support.

#### ***Response to Arguments***

5. Applicant's arguments filed 2/5/07 have been fully considered but they are not persuasive.

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Claim 12 has been inadvertently left out in the last office mailed out on 10/3/2006, but it is now included the rejections made under O'Rourke in view of Flashinski and Kennedy. Since claim 12 was left out in the last office action, this office is not made final.

The applicant argues Flashinski does not show a container formed in a tablet and tray with a permeable membrane. But this structure is clearly illustrated in Figures 4-7 wherein Flashinski shows a slidable support (30B) with a container being a table (24) having an active substance in a tray (20) with a fragrance permeable membrane (28).

With respect to Kennedy, the applicant argues Kennedy shows multiple embodiments each of which discloses multiple housings, and since no single embodiment teaches the claimed support having two housings that is adapted in size and shape to two different types of containers. This argument is not deemed persuasive. As seen and illustrated in the drawing Figures of Kennedy, there can be two different type in size and shape of the active substances where a triangle wedge shaped activate substance or a circular shaped active substance can be provided in a carrier support which has compartments that can accommodate such size and shape. Furthermore, Figure 8 of Kennedy which is shown to carry a circular shaped active substance has the triangle compartment that is capable of carrying and supporting the triangle wedge shaped active substance as shown in Figure 1. The support structures of Kennedy which has the compartments shown to accommodating varying size and shapes of active substance clearly meets the recited support having two housings.

The applicant also argues O'Rourke fails to show the base body with a U shape and further argues that if the pass-through path 18 of O'Rourke was a U-shaped body, it would not

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allow a tray to pass there through. This argument is not deemed persuasive since the base body having has a U-shaped does not in any way hinder the operation of the slidable tray.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sang Y. Paik whose telephone number is 571-272-4783. The examiner can normally be reached on M-F (9:00-4:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 571-272-4777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Sang Y Paik  
Primary Examiner  
Art Unit 3742

syp